IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.4002 OF 2001

Shri Shantaram S. Naik, Adule
Shetoba Chawl, Nira Baramati Road,
Nira, Tal.Baramati,
Dist.Pune - 412 102 .. Petitioner
(Orig.Complainant)

v/s.

1. Bombay Oxygen Corporation Ltd.
L.B.Shastri Marg, Mulund,
Mumbai - 400 080.

2. The Factory Manager,
Bombay Oxygen Corporation Ltd.
Nira, Tal.Baramati,
Dist.Pune- 412 102. .. Respondents
(Orig.Respondents)

Mr.Madhav Jamdar for the petitioner.

Mr.R.R.Salvi i/by Mr.A.V.Lokhande and Ms.Suvarna Telgote & T.M.Kolhatkar for respondents.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 3rd October, 2005

ORAL JUDGMENT

This petition challenges the order of the Industrial Court dismissing the complaint filed by the petitioner. The complaint was filed for rectification of his birth date and for payment of salary and other allowances in accordance with the order of the Labour Court in complaint (ULP) No.87/91.

2. The facts in the case are undisputed. The services of the petitioner were terminated in the year 1990. The petitioner challenged the order of the respondents dismissing him from service by

filing complaint (ULP) No.87/91 before the Labour Court. This complaint filed under item 1 of schedule IV was decided by the Labour Court on 20th January, 1994. The Labour Court held that an unfair practice had been committed by the respondent under item 1(g) of Schedule IV of the MRTU & PULP Act. The Labour Court further directed the respondents to reinstate the petitioner into his original post with continuity of service and 80% of backwages.

3. The order of the Labour Court was challenged by the respondents by filing a revision before the Industrial Court. The Industrial Court remanded the matter to the Labour Court. Aggrieved by this decision, the petitioner moved this court by way of a writ petition.

4. The writ petition filed by the petitioner being writ petition No.1732 of 1997 was allowed by an order of this court dated 11th July, 1997. The order of the Industrial Court was set aside and the Labour Court's order was confirmed. The respondent-company filed a Special Leave Petition before the Apex Court. The said Special Leave Petition was dismissed on 19th January, 1998.

5. In the meantime, after the High Court allowed the writ petition, the petitioner filed complaint being complaint (ULP) No.849 of 1997 on 28th November, 1997. This complaint was filed under

item 9 of schedule IV alleging that the respondents had not complied with the order of the Labour Court to reinstate him with 80% of back wages and continuity of service. After the S.L.P. was dismissed, the respondents reinstated the petitioner on 7th November, 1998. The respondents also filed an application on 29th January, 1999 requesting the Industrial Court, Pune to dispose of the complaint as infructuous since they had paid the amount due to the petitioner under the order of the Labour Court. This amount as calculated by the respondents was Rs.1,03,702.91. The complaint itself was then disposed of by the Industrial Court without considering as to whether the calculations are correct and without ascertaining whether an unfair labour practice had been committed by the respondents.

6. The petitioner then filed a fresh complaint being complaint (ULP) No.112 of 1999 contending that he had not being paid back wages for the entire period and the amount of Rs.1,03,702.91 was less than the amount due and payable to him. According to the petitioner, after calculation, the entire amount due to him was Rs.3,12,050/-. The other contention raised in the complaint was that the respondent had changed the petitioner's date of birth in the company's records from 1.6.58 to 1.6.50. Therefore, the unfair labour practice complained of in the complaint was under item 9 of schedule IV of the MRTU & PULP Act. In reply, the

respondents contended that they had already paid Rs.1,03,702.91 to the petitioner and no further amount was due and payable to him. With respect to the allegation of date of birth being changed, the respondents contended that the petitioner had produced only a Xerox copy of the school leaving certificate on which basis the respondents could not be expected to change the date of birth of the petitioner maintained on their records.

7. The parties led evidence before the Industrial Court. The petitioner produced the originals of his school leaving certificate showing that his date of birth was 1.6.1958. This document has not been disputed by the respondent. As regards the calculations filed by both the parties, the witness for the respondents has admitted that the calculations of the respondents did not take into consideration the amounts payable to the petitioner under the agreement dated 1st May, 1987 which was signed between the respondent-company and Engineering and General Workers Trade Union representing the workmen employed with the respondent-company. A subsequent agreement was also entered into between the same parties on 29th May, 1992 which came into operation from 1st January, 1992. The wages payable under this agreement were also not paid to the petitioner.

8. The Industrial Court after considering the evidence on record and the submission made before

it, has concluded that the petitioner was not entitled to any further amounts from the respondents. The Industrial Court was of the view that the attitude of the petitioner was such that would not entitle him to claim any further amount from the employer. As regards the date of birth, the Industrial Court was of the view that the petitioner had waited for too long to have his date of birth changed. According to the Industrial Court, since the petitioner had not raised this issued in the earlier litigations, he could not agitate the same issue in the present complaint.

The petition impugns this order.

9. The evidence of the respondents' witness discloses categorically that the settlements governing the service conditions of the workman were not employed with the respondents taken into account while calculating the wages due and payable to the petitioner. There can be no dispute that the petitioner was entitled to 80% of back wages as directed by the Labour Court from the date he was removed from service in the year 1990 till the order of the Labour Court dated 20th January, 1994. Subsequent to this date, the petitioner would naturally be entitled to full back wages and the other attendant benefits since the respondents had chosen not to reinstate the petitioner till the dismissal of the S.L.P. He was reinstated in service only on 7th November, 1998. However, after reinstatement, he was not paid the amount due and

payable to him. Therefore, the complaint of the petitioner that he was not paid in accordance with the order of the Labour Court and the settlement governing his service conditions must be accepted. While calculating the amounts payable to him, the petitioner has deducted the amount of Rs.1,03,702.91. However, he would certainly be entitled to the bonus and medical reimbursement. The provident fund dues have been deducted from his wages. Therefore, he would also be entitled to matching contribution from the employer to be deposited in his provident fund account. The Industrial Court's reasoning that the attitude of the petitioner did not entitle him to any amount, cannot be accepted. There can be no dispute that the amounts are due and payable both under the order of the Labour Court in complaint (ULP) No.87/91 and under the agreements governing the service conditions of the employees working with the respondents.

10. Therefore, the employee's calculations as shown at page 53A of the petition must be accepted after deducting the amounts in respect of the privilege leave, casual leave and sick leave as also leave travel assistance. There is nothing on record to indicate that the leave period could be encashed if not enjoyed. Therefore, the petitioner would not be entitled to this amount for the period upto the order of the Labour Court viz. 20th January, 1994. However, for the subsequent period,

the petitioner is entitled to the claim. As regards the LTA also, there is no evidence on record to indicate that the amount was paid without travelling to any other destination. Therefore, this amount cannot be paid to the petitioner. However, after the order of the Labour Court, the petitioner is entitled to the entire amount as the respondents have not complied with the award by assigning the petitioner any work.

11. The question about change in date of birth has been considered in a very possible manner by the Industrial Court. There was evidence on record i.e. the school leaving certificate to indicate that the petitioner was born on 1st June, 1958. The only reason why the Industrial Court has denied this rectification is because the petitioner approached the court late. The witness for the company has admitted in his evidence that it was only five years prior to the date on which he deposed in court that the company has adopted the practice of mentioning the date of birth on the pay slips. The evidence of this witness was recorded sometime in the year 2000. The petitioner was kept out of employment despite the order of the Labour Court upto 1998. It was only when he received the pay slip after his reinstatement in service on 7th November, 1998 that he realised that his date of birth has been changed and therefore, he immediately filed complaint being complaint (ULP) No.112 of 1998. Therefore, the reasoning of the

Industrial Court cannot be accepted. The date of birth as indicated in the school leaving certificate must be accepted since the respondent has at no point of time disputed the same. Therefore, it must be held that the petitioner was born on 1st June, 1958 and the respondents must rectify their records and record the date of birth of the petitioner as 1st June, 1958.

12. Petition is, therefore, allowed. Rule made absolute. No order as to costs.

(SMT.NISHITA MHATRE, J.)